

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

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|---------------------------------|---|------------------|
| UNITED STATES OF AMERICA, and |) | |
| OXFORD HOUSE, INC., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| |) | Civil Action No. |
| |) | 5:09-CV-00216 |
| v. |) | |
| |) | |
| TOWN OF GARNER, NORTH CAROLINA, |) | |
| and TOWN OF GARNER BOARD |) | |
| OF ADJUSTMENT, |) | |
| |) | |
| Defendants. |) | |

CONSENT DECREE

The United States initiated this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the “Fair Housing Act”), 42 U.S.C. §§ 3601-3619. In its Complaint, the United states alleges that the Town of Garner, North Carolina and the Town of Garner Board of Adjustment (the “Defendants”) violated 42 U.S.C. § 3604(f)(3)(B) of the Fair Housing Act by (1) failing or refusing to recognize their obligation to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling; and (2) failing or refusing to make a reasonable accommodation in their rules, policies, practices, or services to permit the use of a home located at 117 Broughton Street, Garner, North Carolina (the “Oxford House”) as a residence for up to eight persons recovering from addictions to alcohol or illegal drugs. The United States alleges that the Defendants’ conduct constitutes a pattern or practice of discrimination, or a denial of rights to a group of persons that raises an issue of general public importance in violation of the Fair Housing Act, 42

U.S.C. § 3614(a). The United States alleges that the Defendants' conduct constitutes discrimination on the basis of disability in violation of the Fair Housing Act.

On August 16, 2005, Oxford House, Inc. filed a timely complaint against the Town with the United States Department of Housing and Urban Development ("HUD"), pursuant to 42 U.S.C. § 3610, alleging discrimination in housing on the basis of disability. HUD subsequently referred this matter to the Attorney General for appropriate action under 42 U.S.C. § 3610(e)(2).

This Consent Decree (the "Decree") is intended to effect a comprehensive settlement of the United States' claims. To avoid costly and protracted litigation, the United States and the Defendants have jointly entered into and agreed to the entry of this Decree to resolve the claims presented.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

I. JURISDICTION

1. The Court has personal jurisdiction over the Defendants for purposes of this civil action, and subject matter jurisdiction over the claims in this civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a).

II. DEFINITIONS

2. The following terms when used in this Decree shall have the following meaning:

- A. The term "Defendants" includes the Town of Garner, the Garner Board of Adjustment, their employees, elected or appointed officials, officers, agents, and persons or entities acting in concert or participation with them;
- B. "Disability" is the equivalent of the term "handicap" as used in the Fair Housing Act. See 42 U.S.C. § 3602(h);

- C. “Reasonable Accommodation” refers to reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, within the meaning of 42 U.S.C. § 3604(f);
- D. The “effective date of the Decree” refers to the date the Court enters this Consent Decree.

**III. GENERAL INJUNCTIONS AND
NON-DISCRIMINATION PROVISIONS**

- 3. The Defendants shall not:
 - A. deny, or otherwise make unavailable, a dwelling to any person because of a disability of that person residing in or intending to reside in such dwelling, or of any person associated with such person;
 - B. discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, of any person residing in or intending to reside in such dwelling, or of any person associated with that person; or
 - C. refuse to make reasonable accommodations in their rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling.
- 4. The preceding injunctions shall specifically, but not exclusively, cover:
 - A. administering, enforcing, or amending zoning ordinances of the Town of Garner, including, but not limited to, receiving, evaluating, or deciding

upon applications for building permits, special exceptions, variances, or other uses not provided for; and

- B. conducting hearings, inspecting premises, issuing certificates of zoning compliance or certificates of occupancy, or reviewing any decision made by any zoning, land-use, or building official.

IV. ESTABLISHMENT AND IMPLEMENTATION OF REASONABLE ACCOMMODATION ORDINANCE

5. The Defendants have adopted a reasonable accommodation ordinance by adding a new subsection 3.17 to the Town's Unified Development Ordinance. A copy of that reasonable accommodation ordinance is attached to this Consent Decree as Attachment A.

6. Within ten (10) days of adopting and implementing the Reasonable Accommodation Ordinance, the Defendants shall post and publicly display the Reasonable Accommodation Ordinance on the Town's website.

7. The Defendants shall keep written records of each request for reasonable accommodation they receive. These records shall include: (A) the name, address, and telephone number of the person making the request; (B) the date on which the request was received; (C) the nature of the request; (D) whether the request was granted or denied; and (E) if the request was denied, the reason(s) for the denial.

8. If the Defendants propose to modify the Reasonable Accommodation Ordinance, they shall first provide the United States with a copy of the proposed changes.¹ If the United

¹ The Defendants shall send all documents, notices, and other communications required by the Decree to be sent to the United States to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., G Street, Washington, DC 20530, Attn.: DJ #175-54-153.

States does not deliver written objections to the Defendants within sixty (60) days of receiving the proposed changes, the changes may be effected. If the United States makes any objections to the proposed changes within the 60-day period, the specific changes to which the United States objects shall not be effected until the objections are resolved.

9. Nothing in this Decree shall be interpreted to require persons with disabilities — or providers of housing for persons with disabilities — acting or operating in accordance with applicable zoning, licensing, and/or land use laws and practices, to seek permission from the Defendants to begin or continue such action or operation. In addition, nothing in this Decree shall be interpreted to permit persons with disabilities — or providers of housing for persons with disabilities — to violate any applicable zoning, license, and/or land use laws and practices of the Town or the State of North Carolina either before or after commencing operation.

V. REASONABLE ACCOMMODATION FOR 117 BROUGHTON STREET,

10. Within ten (10) days after the effective date of the Decree, the Defendants shall formally grant the request previously submitted by Oxford House, Inc. to permit up to eight persons recovering from addiction to reside at 117 Broughton Street. The Defendants shall grant the request by sending to counsel for Oxford House, Inc. a letter signed by the Garner official with authority to issue such approval.

VI. FAIR HOUSING TRAINING

11. The Defendants shall, no later than ninety (90) days after the effective date of the Decree, provide training in the requirements of the Decree and the Fair Housing Act to the Town Manager and Town Planning Director.

The Defendants shall send all documents, notices, and communications required by or relating to this Decree by regular United States mail and by facsimile to (202) 514-1116.

12. The training shall be conducted by a qualified third party, subject to the approval of the United States. The trainer shall be unconnected to the Defendants or their employees, officials, agents, or counsel, and any expenses associated with this training shall be borne by the Defendants.

13. As part of the training, each person trained shall be given a copy of the Decree and the Act.

14. The Defendants shall, no later than thirty (30) days after training, provide to the United States certifications executed by each person trained confirming his or her attendance and date of training. The certifications shall be in the form of Attachment B.

15. Within thirty (30) days of the completion of the training described in paragraphs 11-14, one or more of the persons trained shall meet with each member of the Board of Adjustment, shall furnish each such member with a copy of this Decree and of the Act, and shall discuss the provisions of the Decree and Act as they pertain to the duties of the Board of Adjustment. Each member of the Board of Adjustment shall sign a certification acknowledging that he or she has received and read the Decree and the Act. This certification shall be in the form of Attachment B hereto.

16. For each person commencing, during the term of the Decree, employment or service as Town Manager, Town Planning Director, or member of the Board of Adjustment, the Defendants shall, no later than thirty (30) days after such commencement or service, give such person a copy of the Decree and the Fair Housing Act, discuss the pertinent provisions thereof, and require such person to sign the certification set out in Attachment C.

VII. REPORTING AND RECORD KEEPING

17. The Defendants shall designate the Town Manager to receive complaints of alleged housing discrimination against any Defendant and coordinate compliance with this Decree. The Town Manager shall maintain copies of the Decree, the HUD complaint form, and the pamphlet entitled “Are You A Victim of Housing Discrimination?” (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone upon request and without charge, including all persons making housing discrimination complaints to any Defendant.

18. The Defendants shall prepare semi-annual reports that detail the actions they have taken to fulfill their obligations under the Decree. The Defendants shall submit their first Compliance Report to the United States no later than six months after the effective date of the Decree, and subsequent reports every six months thereafter, for the duration of the Decree, except that the final report shall be delivered to the United States no fewer than sixty (60) days prior to the date upon which the Decree is scheduled to expire.

19. The Defendants shall include the following information in the Compliance Reports:

A. copies of the training certification and acknowledgment forms signed since the last report;

B. any written complaint received since the last report alleging discrimination by any Defendant with respect to any matter subject to the injunctions in part III, above, including a description of any action taken in response to the complaint and copies of all pertinent documents, such as a copy of the complaint, any documents filed with the complaint, and any written response to the complaint made by any Defendant;

C. the identity of each zoning, land-use, or building application or request for reasonable accommodation related to housing for disabled persons (including those for building permits, special exceptions, variances, or other uses not provided for) for which any Defendant has made a determination, indicating: (1) the date of the application; (2) the applicant's name; (3) the applicant's current residential street address; (4) the street address of the proposed housing; (5) the disposition of the application, including any appeals, indicating reasons for that outcome; and (6) if a vote was taken, how each participant voted and the date of the vote; and

D. all documents presented in support of oral testimony offered by any member of the public at any hearing held with respect to each such application or request that is denied by any Defendant.

20. For the duration of this Decree, the Defendants shall maintain all records relating to implementation of and compliance with all provisions of the Decree, including, but not limited to, all records related to zoning, land-use, or building applications or requests for reasonable accommodation related to housing for disabled persons. The United States shall have the opportunity to inspect and copy any records maintained as required by the Decree after giving reasonable notice to the Defendants.

VIII. MONETARY RELIEF

21. The Defendants shall pay the sum of \$105,000 to OHI within ten (10) days of the effective date of the Decree, by sending a check to the United States payable to "Oxford House, Inc." On receipt of a release of liability in favor of the defendants, in the form of Appendix D,

signed by an authorized representative of OHI, the United States shall send the check to counsel for OHI, and the original signed release to counsel for Defendants.

IX.CIVIL PENALTY

22. The Defendants shall pay \$9,000 to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C). Such payment shall be made no later than thirty (30) days after the effective date of the Decree by submitting to the United States a check in such amount made payable to the United States Treasury.

X. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

23. The Decree shall remain in effect for a period of four (4) years after its effective date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Decree's term, the United States may move the Court to extend the duration of the Decree in the interests of justice, or for other good cause, including on the basis that a Defendant has failed to comply with a provision of the Decree.

24. The parties agree to work cooperatively with one another in good faith to resolve informally any differences regarding interpretation of, and compliance with, the Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by any Defendant to perform in a timely manner any act required by this Decree or otherwise to act in violation of any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including but limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees that may have been occasioned by the violation or failure to perform.

25. The parties shall have the right to seek from the court modifications of the Decree, provided that any request for a modification has been preceded by good faith negotiations between the parties. The parties may agree in writing to modify any deadlines established by this Decree without Court approval.

XI. COSTS OF LITIGATION

26. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation, except as otherwise provided herein.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this 19th day of January, 2011.



United States District Judge

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Civil Rights Division

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ATTACHMENT A

Ordinance Changes

(1) Change the designation "Handicapped or home disabled" to:

"Handicapped or disabled home" and add to the end of the existing definition the following: "Provided, however that a proposed handicapped or disabled home may apply to the Board of Adjustment for a reasonable accommodation in the form of special exception as provided in this ordinance."

(2) Add the following to the existing UDO:

3.17. Special exceptions.

A. Applicability. The Board of Adjustment is authorized to grant special exceptions for the special circumstances set forth in this section to allow for a reasonable accommodation under the Federal Fair Housing Act for handicapped or disabled persons proposing to live in a handicapped or disabled home.

B. Application. An application for a special exception under this section shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director. No filing fee shall be required for such application.

C. Approval process. The procedures set forth in Section 3.15.C for variances shall apply to Staff Review and Report, Public Hearing Notice and Action of the Board of Adjustment.

D. Approval criteria. The Board of Adjustment shall grant a special exception to any provision of this ordinance as a reasonable accommodation under the Federal Fair Housing Act if the board finds by the greater weight of the evidence that the proposed special exception is:

(i) "Reasonable. " An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's ordinance provisions) ;and

(ii) "Necessary." An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the affects of the particular disability or handicap), and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the Town.

Attachment B

CERTIFICATION OF ATTENDANCE AT FAIR HOUSING TRAINING

On _____, I attended training on the Consent Decree entered by the federal district court in *United States v. Town of Garner, et al.*, Civil No. (E.D.N.C.) on _____, 20__), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Decree and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Print job title)

(Date)

Attachment C

**ACKNOWLEDGMENT OF RECEIPT OF COPIES OF CONSENT DECREE AND
FAIR HOUSING ACT**

On _____, I received copies of and have read the Consent Decree entered by the federal district court in *United States v. Town of Garner, et al.*, Civil No. 5:09-CV-00216 (E.D.N.C.) on _____, 20__), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Decree and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Print job title)

(Date)

Attachment D

GENERAL RELEASE IN FULL AND FINAL SETTLEMENT OF CLAIMS

relating to the Consent Decree entered in *United States v. Town of Garner, et al.*, Civil No. 5:09-CV-00216 (E.D.N.C.) on _____, 2011.

In consideration of the parties' agreement to the terms of the Consent Decree entered by the Court in *United States v. Town of Garner, et al.*, Civil No. 5:09-CV-00216 (E.D.N.C.) on _____, 2011. and the Defendants' payment of the sum of ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000), I, _____, my heirs and assigns, hereby release the Defendants in this action, the Town of Garner and the Garner Board of Adjustment, and their successors, insurers, agents and assigns, from any and all liability for any existing, pending or potential claims or causes of action, legal or equitable, I may have against them arising out of the allegations raised in this action or any related action or complaint pending before HUD involving these Defendants. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

In witness whereof, with the intent to be legally bound hereby, we have hereunto set our hands and seals this _____ day of _____, 2011.

Name

Address